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Policies and Procedures

Title: Administrative Grievance System

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This P&P establishes procedures and time limits for filing and attempting to resolve grievances under the Economics Agencies Administrative Grievance System.

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1. Introduction

This P&P establishes procedures and time limits for filing and attempting to resolve grievances under the Economics Agencies Administrative Grievance System.

All Economics agencies' employees, or former employees for whom personal relief can properly be provided, may file a grievance. Reinstatement and transfer eligibles applying for positions under a merit promotion program are excluded. The EMS Employee Relations Section is available to provide more detailed guidance to employees and supervisors concerning grievances.

2. Reprisal Policy

Use of the grievance system is a protected activity. There must be no restraint, interference, coercion, discrimination, or reprisal against an employee or an employee's designated representative because of the filing of a grievance. Employees who provide information concerning matters related to grievances are similarly protected. An individual who engages in restrictive activities may be committing a **prohibited personnel practice** which could warrant serious disciplinary action.

A grievant has the option of presenting such an allegation to the Director, Dispute Resolution Staff, Office of Civil Rights Enforcement, or making it part of the pending grievance.

3. Grievable and Nongrievable Matters

Grievable Matters

Except as discussed under nongrievable matters, the grievance system is available to resolve matters of concern or dissatisfaction that relate to the employment of an individual and are subject to the control of agency management. This also includes any matter in which an employee alleges that coercion, reprisal, or retaliation has occurred for using the grievance system.

Nongrievable Matters

The grievance system does not apply to these matters:

- Discrimination because of race, color, religion, sex, national origin, age, marital status, handicapped condition, or reprisal for Equal Employment Opportunity activities. These matters can only be appealed under the discrimination complaint system. (See P&P 4991,

Discrimination Complaint System, which replaced hl711.)

- The content of established agency regulations and policies.
- A dispute over a matter for which an employee has an entitlement to file an appeal, grievance, or formal challenge in some other forum. This includes matters that are reviewable by the Merit Systems Protection Board, the U.S. Office of Personnel Management, and the Equal Employment Opportunity Commission.
- Failure of an agency to select an employee for promotion from a group of properly ranked and certified candidates, or failure to grant a noncompetitive promotion.
- Separation or termination of an employee for unsatisfactory performance or misconduct during a probationary or trial period.
- The return of an employee from an initial appointment as a supervisor or manager to a non-supervisory or non-managerial position for failure to complete the supervisory or managerial probationary period satisfactorily.
- The content or substance of performance elements and standards established by an agency for an employee's position.
- Nonreceipt of an award or the amount of an award.
- A decision to grant or deny a Senior Executive Service (SES) pay rate increase.
- Withholding of a within-grade increase.
- A preliminary warning or notice of an adverse action.
- SES performance-based actions such as performance evaluations or the return of an SES career appointee to the general schedule during the 1-year probationary period.
- Failure to grant recruitment and relocation bonuses.
- Expiration of term or temporary promotions.

4. Time Frames

Agencies have a total of 90 days to complete the processing of a grievance. This time begins when the

employee definitively indicates to the agency that an informal grievance is being initiated. If the 90-day period is exceeded, the employee may request that the grievance be elevated to the Director, DRS, for assignment to a grievance examiner. The grievance examiner will conduct necessary inquiries and issue a recommended decision. (See the table below containing administrative grievance time limits.)

Action	By	Time Limit
Informal Grievance Filed	Employee	Within 15 days of the act or occurrence or within 15 days of the date the employee became aware of the act or occurrence.
Resolution Attempted	Designated Official (Informal)	Within 30 days of receiving the informal Designate notifies the employee in writing.
Formal Grievance Filed	Employee	Within 15 days of receiving the notice terminating the informal grievance or within 15 days of the effective date of a disciplinary
Proposed Disposition Issued	Designated Official (Formal)	Within 90 days from the date the employee originally filed the informal grievance. If the grievance is not resolved, the Designated Official notifies the employee in writing.
Final Agency Decision Requested	Employee	Within 15 days of receiving the proposed disposition The employee may request a final agency decision, with or without a grievance examiner being appointed.
Grievance Examiner's Recommended Decision Appealed	Agency Head	Within 20 days of receiving the recommended decision.

5. Informal Resolution

An employee must seek informal resolution of a grievance except when the agency head has been substantially involved in the matter leading to the grievance, or when the grievance is in response to a disciplinary action (suspension of 14 days or less).

Informal grievances must be presented to the immediate supervisor or the lowest level supervisor who can make a decision on the grieved matter. If the individual who receives the grievance does not have the authority to resolve the grievance, that official must forward the grievance to the official who has the

authority to do so.

6. Representation

An employee has the right to be represented at any stage of a grievance by a personally chosen representative. An agency may disallow a representative if the agency determines that the representative would:

- be in a position which is a conflict-of-interest,
- be required to perform other priority work for the agency, or
- give rise to unreasonable delays in the processing of the grievance and/or unreasonable costs to the agency.

Agencies must communicate the disallowance of a representative to the employee in writing along with notification that the Director, DRS, will review the decision, if the employee files a written request within 10 days.

The agency will recognize a representative only after the employee informs the agency in writing.

The employee and/or a designated representative will be granted a reasonable amount of official time to prepare and present the grievance. All requests for the use of official time must be presented to the immediate supervisor.

7. Grievance Procedures

Informal Grievance

An employee must submit an informal grievance within 15 days of the act or occurrence that is the basis of the grievance, or within 15 days of the date the employee became aware of the act or occurrence. The grievance must be submitted either orally or in writing to the designated official, must clearly indicate that it is a grievance, must clearly indicate the matter(s) being grieved, and must specify the personal relief being sought.

The designated official either retains control of the grievance and attempts resolution within 30 days through corrective action, clarification, or other adjustments, or forwards the grievance to the official who has authority to resolve the grievance. The designated official responds to the grievance in writing,

unless the employee states that a written response is not wanted.

If the grievance is not resolved, the designated official issues a memorandum to the employee, which does the following:

- outlines the issues in the grievance and the attempts made to resolve them;
- informs the grievant that the informal grievance has been terminated;
- advises the employee that a **formal** grievance may be filed, identifies the official with whom it may be filed, and specifies the 15-day time limit to file a formal grievance; and
- advises the employee that if the agency has not completed processing the grievance within 90 days of the initiation of the informal grievance, the employee may elevate the grievance to the Director, DRS.

Formal Grievance

An employee who wishes to proceed with a formal grievance must file it with the designated official within the 15-day time limit specified in the memorandum terminating the informal grievance or within 15 days of the effective date of a disciplinary action. If the grievant can show good cause, the time limit for filing a formal grievance may be extended by the designated official.

The formal grievance must be in writing, be signed by the employee or a designated representative, identify the matters at issue, specify the personal relief being sought, and explain why the proposed resolution at the informal level was not acceptable. The grievance may not concern any matter that was not presented as part of the informal grievance, except for an allegation of reprisal for filing the informal grievance.

The designated official will either accept or reject the grievance. Grievances can be rejected if they are untimely, concern a matter excluded from coverage, are filed by employees excluded from coverage, or do not conform to the filing requirements of a formal grievance. "Failure to request personal relief is grounds for rejection of the grievance. If rejected, the designated official must inform the employee in writing of the reason(s) for the rejection and that the rejection may be appealed to the Director, DRS, within 10 days of receipt of the rejection notice. If appealed, the Director, DRS, will review the decision to reject the grievance. If the rejection was improper, the agency will be instructed to accept the grievance.

If the grievance is accepted, the designated official will make necessary inquiries to obtain sufficient facts to adjudicate the matter. If the grievance is not resolved, the designated official will issue a

proposed disposition within 90 days from the initiation of the informal grievance that advises the employee of the following:

- the agency's position on the grievance matter(s) and whether any corrective action(s) will be implemented;
- the right to request a final decision by the agency head, with or without a grievance examiner;
- the 15-day time limit within which to request a final agency decision;
- the agency's intention to close the grievance without further action, if the employee does not submit a request for a final agency decision within the 15-day time limit (in such an event, the proposed disposition becomes the agency's final decision); and
- that a copy of the grievance file is attached for the grievant's review.

8. Final Agency Decision

If an employee does not accept the proposed disposition of the designated official, the employee may request a final agency decision within 15 days of receiving the proposed disposition. The request must indicate the issue(s) over which disagreement remains, include any evidence to support the continued request for personal relief, and state whether further review and a recommended decision by a grievance examiner is requested. The employee must also provide the Chief of the Employee Services and Policy Development Branch with a copy of any request for a final agency decision.

The deciding official will be the head of the agency, except where that individual has had prior substantive involvement with any aspect of the grievance. In such a situation, the final decision must be made by a higher-level official.

If a final agency decision, without a grievance examiner, is requested, the agency head will review the grievance file and consider additional arguments. The agency head will then issue the employee a written decision which will be the final agency decision on the grievance.

If a grievance examiner is requested, ESPDB will promptly forward the grievance file and the employee's request to the Director, DRS. The accompanying transmittal will address the merits of any additional arguments put forward by the employee, and will certify that the employee has been given a copy of the grievance file.

The grievance examiner will conduct appropriate inquiries within the scope of the grievance and prepare a written recommended decision. The recommended decision will be sent to the employee

and/or the employee's representative and to the agency head.

After receiving the recommended decision, the agency head may either:

- adopt the recommendation of the grievance examiner as the final agency decision on the grievance;
- grant the grievant more relief than recommended by the grievance examiner; or
- within 20 days of the date of the recommended decision, appeal the recommendation to the Director, OCRE, when the recommendation can be shown to be contrary to law, rule, regulation or published policy; to be supported by less than substantial evidence; or to be setting a precedent of such wide and detrimental impact on the agency that further review is warranted. The agency head will notify the employee in writing of such an appeal.

The Director, OCRE, makes the final decision on any referred grievance. There is no further administrative review.

9. Termination of Grievances

Agencies have the authority to cancel or temporarily suspend the processing of grievances, or portions of grievances, when they are untimely or otherwise inappropriate. Specifically, an agency may cancel or suspend a grievance or a portion of a grievance when:

- the grievant requests that the grievance be canceled;
- the matter(s) at issue is not covered by the Administrative Grievance System;
- the grievant fails to provide sufficient detail to identify clearly the matter(s) being grieved or specify the personal relief requested;
- the grievant requests that disciplinary or other action be taken against another employee;
- the grievant (or designated representative) fails to comply with appropriate time frames and procedures in the agency's grievance system; or
- the grievant has previously, or later, filed an appeal, complaint, or other formal challenge on the same matter being considered in a grievance.

10. Summary of Responsibilities

Agency Heads

- Issue final decisions on formal grievances, unless they have been substantially involved in matters giving rise to grievances (If an agency head has been substantially involved, then, depending on the level at which the grievance was filed, either the Assistant Secretary for Economics, the Deputy Secretary, or the Secretary issues the final decision.)
- Request that ESPDB forward grievance files to the Director, DRS, when a grievance examiner has been requested.

Designated Officials (Informal Grievance)

- Attempt to resolve grievances through corrective action, clarification, or other adjustments within 30 days of receipt of the grievance.
- Notify employees of the termination of the informal grievances and the 15-day limit within which to file formal grievances when informal grievances are not resolved.

Designated Officials (Formal Grievance)

- Accept or reject formal grievances.
- Attempt to resolve grievances in a fair and impartial manner.
- Issue proposed dispositions of grievances within 90 days of initiation of informal grievances and notify employees of the 15-day limit within which to request final agency decisions.

Employees

- Comply with appropriate time limits established by the agency.
- Submit grievances with sufficient detail to identify the matters being grieved and the personal relief sought.

11. Glossary

Completion of Processing. When an agency has either rejected a grievance, canceled a grievance, resolved a matter to the employee's satisfaction, or has issued a written proposed disposition of a formal grievance.

DRS. Dispute Resolution Staff, Office of Civil Rights Enforcement.

Days. Calendar days. If the last day of a time limit is a non-workday (holiday or weekend), the deadline is automatically extended to the next workday.

Designated Official (Informal Grievance). Usually the immediate supervisor or the lowest level supervisor who has the authority to make a decision on the matter being grieved.

Designated Official (Formal Grievance). Usually a division director. If a division director is the grievant's first level supervisor, then the designated official must be the next level supervisor above the division director.

ESPDB. Employee Services and Policy Development Branch, EMS.

Grievance. A request by an employee, or a group of employees acting as individuals, for personal relief in a matter of concern or dissatisfaction which is subject to the control of agency management, relating to the employment of the employee(s).

Grievance Examiner. A person appointed by the Director, DRS, to conduct appropriate inquiries into a grievance and to prepare a written recommended decision.

Grievance File. A separate file established by an agency in connection with a grievance and contains all documents (or copies) related to the grievance.

Personal Relief. A specific remedy requested by the grievant on an employment-related dispute. The requested remedy must benefit the grievant personally and may not include an action affecting another employee of the agency. ¶ Failure to request personal relief is grounds for rejection of the grievance.